an employee of the defendants whilst the plaintiff was not. The defendants were held liable for the negligence of the crane-driver in that

"He hoisted and slewed his crane at the same moment, without receiving a signal from the plaintiff, so that the hook caught in the plaintiff's clothing," etc.

Hilbery J. there said:

"The right action, of course, for the crane-driver was to be looking out through the glass panels in the front of his cabin, which was on the right side of the crane, to observe the signal given and the position of the chains and hooks, and to hoist slowly, one would have thought, until they were plainly clear of the men on the lorry, and then to swing them over the side into the barge."

The question I have had to ask myself, in the present case, is whether it was sufficient for the crane-driver to commence hoisting the load on getting the required signals without taking any further steps to ensure that he could hoist in safety having regard to all the attendant circumstances relating to the lift. The evidence is to the effect that, after fastening their respective chains around the load, each of the two workers had to move their bodies away from the load to guard against any sway at the commencement of the lift. The plaintiff's co-worker, Teo Ah Kam, claims that he held the upright chain above the hook with his right hand to "steady" the load whilst he had his left hand in readiness to ward off any swinging on the part of the load in an emergency and it is clear from the evidence of the crane-driver that Teo Ah Kam was in such a state of readiness. It was the plaintiff who gave the signals throughout the morning but the crane-driver claims that he could not see his hands clearly immediately before the accident. Teo Ah Kam, however, claims that he saw the plaintiff's left hand rising with the load to a height of 3 to 4 feet above the ground. One would have thought that, if the crane-driver had been more attentive, he should have been able to see this too. It should also be remembered that everyone was working at high speed in order to get the loads to the wharf on time and that they all were probably pretty tired by the time the accident occurred as they were approaching the end of their work on the bars.

It follows from my findings of fact that I have rejected the plaintiff's version, however sympathetic one may feel towards him for the pain and suffering he had to endure. He was an unsatisfactory witness in many ways.

I now turn to the question of the signals used. Had specific instructions been given to the crane-driver with regard to the signals and the conditions under which he could safely commence each lift, this accident could probably have been averted. But, apparently, no instructions were given to him by anybody and he had to learn to co-operate with the workers on the ground entirely from previous observation of how this kind of work had been done by other crane-drivers. It seems to me also that the fact that the voice and hand signals were always simultaneous may have led the crane-driver to assume on this occasion that the voice signal alone would suffice, which, of course, he should not have done. Although the tally clerk says that the voice signal was given everytime but that the hand signal was sometimes not given, I do not think that he was particularly observant as to this part of his evidence on hand signals as he must have spent most of his time in counting and writing.

On the whole, I am of the opinion that the crane-driver, working at the speed at which I have already said all three of them were working, commenced the hoist without paying as much attention to the conditions below as he should have done. He acted on a clear voice signal to lift and that was all with which he, on his part, was really concerned. I do not think either he or Teo Ah Kam were paying particular attention to the finality with which the hand signal was given because, as the lift began, the plaintiff's left thumb got caught under the chain and his right hand must have travelled very swiftly from a raised position to his left elbow in order to assist his left hand during the early stages of the lift. Though the plaintiff was largely to blame by his own contributory negligence the crane-driver should also have been a little more careful in the sense that he should have seen to it that he had a clear view of both the plaintiff's hands before commencing the lift, notwithstanding the signals he received. I would apportion his share of the responsibility at 25%. The plaintiff therefore succeeds to the extent of 25% of the total damages, i.e. 25% of $3,500 general damages and $500 special damages making a total sum of $1,000 with costs on the lower scale.

Order accordingly.

Solicitors: *Ironside & de Souza; Lee & Lee.*

MOHAMED ADAT & ORS. v. PUBLIC PROSECUTOR

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Chua J.) March 9, 1967]

[Singapore — Federal Court — Criminal Appeal No. Y. 6 of 1966]

Criminal Law and Procedure — Trial by jury — Summing up — Non-direction on accomplice evidence — Whether one accomplice can corroborate fellow accomplice.

Penal Code s. 300 — Murder — Direction to jury — Non-direction.

The four appellants were convicted by a jury of the murder of one *R* at a "pasar malam" at Trevose Crescent, Singapore on the principal evidence of five witnesses. On appeal counsel for the appellants contended that the learned trial judge erred in law because he failed to direct the jury that the five witnesses (whose evidence he described as "tainted evidence")

could be accomplices in the offence charged and that he failed to direct the jury on the danger of acting on the uncorroborated evidence of accomplices.

Held: although the learned trial judge said in his summing up that the five witnesses were accomplices he did not direct the jury whether these five witnesses were accomplices and if they considered them to be accomplices, although it was open to them to convict the appellants upon the uncorroborated evidence of these accomplices, it was dangerous to do so unless the evidence was corroborated in material particulars and that one accomplice cannot corroborate a fellow accomplice. The jury therefore had not been properly directed and it was quite impossible to say with certainty that the appellants would have been convicted. The convictions should therefore be quashed.

FEDERAL COURT.

Dato' David Marshall for the 1st, 2nd and 4th appellants.

Allen Yau for the 3rd appellant.

K. S. Rajah (*C. Y. Chia* with him) (Deputy Public Prosecutor) for the respondent.

Chua J.: The four appellants in this case were convicted of murder in a trial held by jury.

The short facts are these. On the night of the 17th August, 1965, the deceased Rafie bin Osman was walking along the "pasar malam" at Trevose Crescent when he was assaulted by some persons and he fell to the ground. Shortly after, he was found dead at the spot where he fell. There were two stab wounds inflicted on the deceased one of which was fatal — the stab wound in the chest which penetrated the heart and in which a knife was found embedded in it. Ex. P.11 was the knife. The other stab wound was in the region of the right side of the body level with the right elbow. There were also abrasions and superficial wounds on the body.

The principal evidence against the appellants was the evidence given by five witnesses — Abdullah bin Rawjan, Sinnathamby, Selamat bin Ahmad, Tohar bin Kanali and Hassan bin Haji Ali — whose evidence the learned trial judge described as "tainted evidence", and by two other witnesses — Mahat bin Moing and Hassan bin Abdul Latiff.

The evidence of Abdullah bin Rawjan was shortly this. He lived at No. 178-A Breeze Plain. On the morning of the 17th August, 1965, he met the fourth appellant. The fourth appellant told him that he wanted to borrow a knife and Abdullah lent him one. Ex. P.12 was the knife. At about 6.30 p.m. that same day the fourth appellant invited him to go to the "pasar malam" at Trevose Crescent. He in turn invited Sinnathamby. He met the fourth appellant, Sinnathamby, Selamat bin Ahmad, Tohar bin Kanali and two other youths in his kampong and together they went by bus to the "pasar malam" at Trevose Crescent. On arrival there they had food at a stall and after that the fourth appellant brought them to see the first appellant. They were introduced to the first appellant who then and there told them that there would be a fight that night and asked them to scatter. He moved away from the place and as he did so he saw the first appellant stop three Malay youths, two of whom were allowed to proceed on their way but one was detained. This Malay youth who was detained was then assaulted but he was unable to say by whom. He saw this Malay youth fall down and then the people scattered. He identified the place where the dead body of Rafie bin Osman was found as the place where this Malay youth fell after being assaulted. He then went straight to the main road and boarded a bus and went home. Two days later he found the knife Ex. P.12 in his house. He did not know who had returned it. Subsequently the police took possession of the knife Ex. P.12.

Sinnathamby's evidence was shortly this. He lived at 27 Breeze Plain. On the 17th August, 1965, Abdullah invited him to go to the "pasar malam" at Trevose Crescent. Seven of them went — he, Abdullah, the fourth appellant, Selamat, Tohar and two others. On arrival they had food. While they were having food the fourth appellant produced a knife, similar to Ex. P.12, from his back trouser pocket and had a look at it and put it back in his back trouser pocket. After their food they walked about in the "pasar malam" where the fourth appellant introduced them all to the first appellant who immediately said "There is some matter tonight" by which he understood that there was going to be a fight. The first appellant then asked them to walk in pairs and they did so. He then saw three persons approaching. The first appellant stopped them, two of the persons walked on, one remained. The one remaining and the first appellant then spoke together for a while. Then the first appellant punched this person in the face and he fell down. He then saw the second appellant hit this person who was on the ground with a Qantas bag. He saw no one else attack this person. He saw the fourth appellant who was in front of him, but the fourth appellant did not do anything. Then he and the fourth appellant ran away and with two or three others they went to the 6th milestone Bukit Timah Road where the fourth appellant went into his friend's house and left the knife on the table in the house and then went to wash his hands. The fourth appellant's friend was a Malay who was earlier in the group. They waited for the friend who gave the fourth appellant some money for them to go home in a taxi.

The evidence of Selamat bin Ahmad was shortly this. He lived at No. 96 Breeze Plain. On the 17th August, 1965, the fourth appellant invited him to go to the "pasar malam" at Trevose Crescent and seven of them went — he, Abdullah, fourth appellant, Tohar and three others. They had a meal on arrival and after

that they walked along the "pasar malam". They met the first appellant and the fourth appellant introduced him to the first appellant who said "There will be a fight or quarrel tonight" and asked them to disperse, to walk singly. He did not agree to join in the fight and started to walk away. As he did so he saw the first appellant stopping three persons. The first appellant allowed two of these three persons to proceed on but detained the other. He then saw the first appellant punch the person who was detained and five or six other persons rushed at this person who was punched and there was confusion. He was frightened and ran away. He boarded a bus and went to the 6th milestone Bukit Timah Road to the house of the first appellant where he met the fourth appellant, Abdullah and Tohar and together they went back to their respective houses.

The evidence of Tohar bin Kanali was shortly this. He lived at 27-A Breeze Plain. On the 17th August, 1965, the fourth appellant invited him to go to the "pasar malam" at Trevose Crescent. Seven of them went — he, Abdullah, Sinnathamby, Selamat, fourth appellant and two others. When they arrived they had food at a stall and then they walked along the "pasar malam" where the fourth appellant met the first appellant. The fourth appellant introduced him to the first appellant who said there was to be some matter and asked him to disperse and walk away. He walked away and he saw people scattering and running about. He then saw the fourth appellant and Sinnathamby walking fast in a lorong towards the main road. He followed them and went with them to the 6th milestone Bukit Timah Road and went into a kampong and he waited there for the arrival of the first appellant. About half an hour later the fourth appellant came and told him that the first appellant had given some money for them to go home. He, Sinnathamby, fourth appellant and Selamat then went home. Two days later, on the 19th August, at 2.30 p.m. he went to the Bukit Timah fire station at the request of the fourth appellant to meet one Mohamed Salleh. The fourth appellant had asked him to get a knife from Mohamed Salleh. He met Mohamed Salleh. He said that although Mohamed Salleh looked like the third appellant he could not definitely identify him as the third appellant. Mohamed Salleh handed him the knife Ex. P.12 which he took back and handed it to Abdul Rahman bin Rawjan the brother of Abdullah bin Rawjan.

The evidence of Hassan bin Haji Ali was shortly this. He lived at the Bukit Timah fire station. He knew the third appellant. On the 17th August, 1965, at about 5 p.m. he met the third appellant at the main gate of the fire station. The third appellant asked him to go along with the third appellant to the "pasar malam" at Trevose Crescent and he did. On arrival he and the third appellant met the first and second appellants and another Malay. He then saw the first appellant stop three Malay youths. The first appellant allowed two of these Malay youths to proceed and the first appellant assaulted the Malay youth that remained. The second appellant was then with the first appellant. After the first appellant had assaulted this Malay youth the second appellant hit this youth with a Qantas bag. After that he saw the third appellant rush up to this youth but his view was then obstructed and he could not see what happened. Then he heard the third appellant's voice asking them to run. He then went towards the main road where he saw the first and second appellants and after that he went home. The following day at 9 p.m. he met the third appellant in the compound of the Bukit Timah fire station. The third appellant told him: "Don't tell anybody about yesterday's incident. If you tell I will get into trouble."

The evidence of Mahat bin Moing was shortly this. At about 2.45 p.m. on the 17th August, 1965, he went with a Chinese friend to the "pasar malam" at Trevose Crescent on his friend's scooter. When he was at the "pasar malam" he saw three Malays walking along and they were stopped by a group of five persons. Two of the three were allowed to proceed leaving one behind and this person was assaulted by the group of five. He identified two of this group of five, they were the first and second appellants. The first appellant asaulted the person who remained with his hands while the second appellant hit that person with a Qantas bag. The other members of the group of five were all there but he could not see what they did as he only saw their backs. The assault lasted about three minutes and the person who was assaulted fell down and he saw a considerable quantity of blood on this person's stomach. He identified the place where the body of Rafie was found as the place where he saw this person who remained behind finally come to rest after the assault.

The evidence of Hussin bin Abdul Latiff was shortly this. He lived next door to the deceased in Kampong Chantek Lama and was his good friend. On the night of the 17th August, 1965, he went to the "pasar malam" at Trevose Crescent with his wife and while on his way home he met the deceased and they exchanged greetings. Later that night he returned to the "pasar malam" to change one of his purchases, which he did and then went to an Indian shop to buy some cigarettes. He then stood outside the shop smoking a cigarette and watching the people walking about in the "pasar malam". He saw three youths walking along and behind them another two. The first, second and third appellants were the three youths who were walking in front. He also saw the deceased there with

two companions. The first, second and third appellants were the three youths who were walking in front. He also saw the deceased there with two companions. The first, second and third appellants went across to where the deceased was. The first appellant assumed a fighting attitude and he saw the first appellant aim a blow at the deceased. By that time the deceased's two companions had walked on. The second appellant was holding a Qantas bag which he swung at the deceased. The bag landed just about the back of the neck of the deceased who bent double. Then the third appellant rushed up to the deceased and he saw the third appellant's hand flash out in the direction of the deceased's chest, whereupon the deceased fell by the drive-way. He walked quickly away and telephoned the police and told them there was a fight. He then went home.

Counsel for the appellants has raised a number of substantial points but it is necessary to deal with only one of them. It is submitted that the learned trial judge erred in law in that he failed to direct the jury that on the evidence before them they could find the five witnesses, whose evidence the learned judge said was "tainted evidence", to be accomplices in the offence charged and consequently he failed to direct the jury on the danger of acting on the uncorroborated evidence of accomplices and on the rule of law that one accomplice cannot corroborate a fellow acomplice.

The evidence was that these five witnesses were arrested by the police along with the four appellants under section 55 of the Criminal Law (Temporary Provisions) Ordinance, 1955. The four appellants were charged with the murder of Rafie but these five witnesses were detained under the Criminal Law (Temporary Provisions) Ordinance, 1955, and at the time of the trial they were detained at the Reformative Training Centre. The learned trial judge was accordingly mistaken in treating these five witnesses as convicted persons who were serving sentences of reformative training.

In dealing with the evidence of these five witnesses, the learned judge observed as follows:

"Now, it is, in a sense, tainted evidence, because it comes from a source which is tainted. All these five witnesses are convicted persons, and therefore do not bear a spotless character; they are not of good character. But this does not for one moment mean that you can or must disregard their evidence as being unworthy of credit. All it does mean is that you must scrutinize it with the utmost care and caution before you accept it. If, of course, you are convinced they are telling the truth, you may accept it and are entitled to act upon it. You will test that evidence with other non-tainted evidence, with other independent evidence in the case, to see whether it confirms or supports their evidence. If it does on various matters, so will you be the more inclined and entitled to accept it."

The learned judged dealt at length with the question of the common intention of the appellants. In his summing-up he said:

"Let me now, gentlemen of the jury, try to summarise briefly to you the evidence which the prosecution say establishes beyond a reasonable doubt the common intention of the four accused. It is too much to expect the four accused to tell us what their common intention was, nor are they by law required to do so, or to say anything. We must try to gauge their common intention by conduct and by surrounding circumstances, by inferences from proved facts.

Let us try to list these various points one by one."

The learned judge then went on to set out the points one by one and he summed up the whole situation in these words:

"And so, gentlemen of the jury, I do not say those are all, but those are some of the major factors which the prosecution say must inevitably and inexorably lead you to the one conclusion only, namely, that these four accused had one common intention on that night; they knew there was going to be a fight, two of them armed themselves in preparation for it, a fight did take place with the result that the victim was killed.

Why was it? What was the reason for this gathering at the pasar malam: the fourth accused and his group of Breeze Plain youths; the first, the second and the third accused from the Bukit Timah fire station? Was it to buy clothes which not one of them appears to have bought, or was it to engage in a fight which the four accused were engaged in. Prosecution's submission to you is that all of these people foregathered there for that purpose, the purpose of a fight. Two of them were armed with knives to be used if the necessity arose; that they were all aware of this, prepared and intending that they should be used to inflict injury on their victim if the occasion should arise. If injury was inflicted it is surely obvious, if inflicted with knives, that any injury done with a knife on the chest is such an injury which is likely in the ordinary course of nature to cause death."

It seems to us that in effect the learned judge said that these five witnesses were accomplices.

The learned judge, however, did not direct the jury to consider whether or not these five witnesses were accomplices and that if they considered them to be accomplices, although it was open to them to convict the appellants upon the uncorroborated evidence of these accomplices, it was dangerous to do so unless their evidence was corroborated in material particulars and that one accomplice cannot corroborate a fellow accomplice.

After a careful scrutiny of the record we are of the view that there was sufficient evidence before the jury on which they could, had the issue been left to them, reasonably come to the conclusion that these five witnesses were *participes criminis*. It follows, in our opinion, that the learned trial judge should have left this question, accomplice *vel non*, to the jury and should have warned them that, if they considered on the evidence that these witnesses were accomplices, it was dangerous for them to act on their evidence unless corroborated in material particulars.

It, therefore, cannot be said that the jury had been properly directed in this case. Had the jury been properly directed on this point it is quite impossible to say with certainty that the appellants would have been convicted. In the circumstances we have no option but to quash these convictions.

Convictions quashed.

Solicitors: *David Marshall.*

GOH MUI TECK v. SEE ENG KIAT

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Buttrose J.) January 25, 1967]

[Singapore — Federal Court Civil Appeal No. Y37 of 1966]

Practice and Procedure — Action — Settlement by solicitors before trial — Whether binding on clients — Conflicting evidence of solicitors.

The issue for determination on this appeal was whether the claim in respect of which this action was brought had been settled between the parties before trial. The proceedings arose out of a road traffic accident. The first plaintiff claimed damages for personal injuries while the second plaintiff (appellant herein) as administrator of the estate of one *G*, claimed damages for the benefit of *G's* estate and his dependents. The respondent admitted liability, but alleged that he had agreed to pay and the appellant had agreed to accept the sum of $5,200 plus costs to be taxed in full and final settlement of the claim. By reason of this agreement the respondent maintained that the appellant was barred from proceeding with the action. There was a sharp conflict of evidence between the solicitors, but on the evidence the learned trial judge found as a fact that there was an agreement whereby the appellant through his former solicitor agreed to accept the amount stated and gave judgment accordingly. On appeal,

Held: (1) on the evidence the appellant's former solicitor had a general authority to and did settle the claim for a reasonable figure;

(2) as there was no misapprehension or mistake as to the terms of the settlement the appellant was bound by the compromise, *Hickman* v. *Berens* (1) distinguished.

Case referred to:—

(1) *Hickman* v. *Berens* [1895] 2 Ch. 638.

FEDERAL COURT.

Harbans Singh Sidhu for the appellant.

S. K. Chan for the respondent.

Buttrose J. (delivering oral judgment): The short issue for determination on this appeal is whether this action had been settled between the parties before the trial.

The proceedings arose out of a collision between a motor cycle ridden by the 1st plaintiff Lim Leng Kay and a motor car driven by the defendant. Accompanying Lim Leng Kay on his motor cycle was a pillion passenger one Goh Ah Yong. As a result of the accident the 1st plaintiff received minor abrasions and bruises but Goh Ah Yong was killed.

The 1st plaintiff claimed damages for personal injuries while the 2nd plaintiff — the present appellant — as administrator of the estate of Goh Ah Yong, deceased, claimed damages for the benefit of the estate of the deceased and on behalf of his dependants. The claim of the 1st plaintiff was settled by a payment of $200 and he thereupon discontinued his action against the defendant.

The defendant in his defence to the 2nd plaintiff's claim admitted that the 2nd plaintiff was bound to succeed against the defendant and, while not admitting negligence, the defendant admitted the right of the 2nd plaintiff to such damages as he was able to prove and did not require him to call any evidence of negligence by the defendant. The defendant however further alleged that he had agreed to pay and the 2nd plaintiff had agreed to accept the sum of $5,200 plus costs to be taxed in full and final settlement of his claim. By reason of this agreement the defendant maintained that the 2nd plaintiff was barred from proceeding with his action.

Now the evidence disclosed that the alleged agreement to settle the 2nd plaintiff's claim was made between the then solicitors representing the parties, namely Mr. Edwin D'Souza for the 2nd plaintiff and Mr. Goh Joon Seng for the defendant. There was unfortunately a sharp conflict of evidence between these two solicitors.

The learned trial judge found as a fact that there was an agreement whereby the 2nd plaintiff through his former solicitor, Mr. Edwin D'Souza, agreed to accept $5,200 plus costs to be taxed in a sum not exceeding $500 in full and final settlement of the 2nd plaintiff's claim and gave judgment accordingly. It is from that judgment that the 2nd plaintiff now appeals.

As I understand the argument the 2nd plaintiff does not quarrel with the learned trial judge's findings of fact. All I desire to say on this aspect of the case is that after carefully considering the evidence I do not see how the trial judge could possibly have arrived at any other conclusion than the one which he did.

The main point which has been argued before us is that where counsel consents to a compromise under a misapprehension, such as where, intending to concede one thing, he inadvertently concedes another, or where the counsel on both sides are not *ad idem*, neither the counsel nor the client is bound by the compromise and the court will set it aside. For that proposition counsel relies on a case of *Hickman* v. *Berens*.(1) In my view the case of *Hickman* v. *Berens* has no application whatever to the facts of this case. This was not a case of counsel consenting to a compromise under a misapprehension or mistake or where both sides are not *ad idem* as to the terms of the compromise. This is a case of one solicitor saying there is a settlement and of